IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 92 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MADHUSUDAN RANGILDAS RANA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 92 of 2002

MS BHARTIBEN for MS SUBHADRA G PATEL for Petitioner No. 1

MR S.S.PATEL, AGP for Respondent State

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 14/02/2002

ORAL JUDGEMENT

The petitioner came to be detained by virtue of an order dated 13.12.2001, passed by the Commissioner of Police, Surat City, Surat in exercise of power under Section 3 of the PASA Act. The petitioner seeks to

challenge the said order by this petition under Article 226 of the of Constitution of India.

2. The grounds of detention indicate that the petitioner has been branded as a boot-legger. The detaining authority has considered one registered offence against the detenu under the Bombay Prohibition Act and recorded statements of two anonymous witnesses. The detaining authority observed that the detenu's activities are that of a boot-legger and are detrimental to public health and public order. The detaining authority recorded a satisfaction that the petitioner is required to be immediately prevented from pursuing his illegal and anti-social activities and resorting to less drastic remedy under ordinary law is not possible as immediate prevention is necessary and therefore, passed the order in exercise of powers under Section 3 of the PASA Act.

3. Learned Advocate for the petitioner submitted that a representation was made on behalf of the detenu on 18.12.2001, which came to be rejected by the State Government on 30.12.2001. The decision of rejection was communicated to the detenu by communication dated 4.1.2002, but it was in fact received by the detenu on 11.1.2002. Learned Advocate for the petitioner Ms. Bhartiben places on record the original communication received by the detenu on 11.1.2002 and submits that there is delay in communication which has affected the right of the detenu. She relied upon the decision in the case of Harish Pahwa Vs. State of U.P., reported in AIR 1981 SC 1126.

4. Learned Assistant Government Pleader Mr. S.S.Patel has opposed to this petition.

5. Having regard to the rival side contentions, the continued detention of the detenu would be affected only on account of delay in communicating the decision on the representation in light of the decision of the apex Court in the case of Harish Pahwa Vs State of U.P. (supra). In that case the order was quashed when there was delay of only 2 days. In the instant case, there is delay of about 4 days and therefore, the delay in communication has resulted into infringement of the right of the detenu of making an effective representation. The order of detention therefore deserves to be quashed.

6. The petition is therefore, allowed. Order of detention dated 13.12.2001 passed by the Commissioner of Police, Surat City is quashed and set aside. Detenu madhusudan Rangildas Rana be released from detention

forthwith, if not required in any other case. Rule made absolute. No costs. Direct service permitted.

(A.L.Dave,J.)

*/Mohandas